

RECEIVED

AUG 19 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Annual Assessment of the Status of
Competition in the Market for the Delivery
of Video Programming

CS Docket No. 96-133

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS

Scripps Howard Cable TV Company ("Scripps Howard") submits these Reply Comments in response to the comments filed jointly by BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") in the captioned proceeding.

There is no question, as pointed out by many commenters in this proceeding, that the legal and market landscape surrounding the market for the delivery of video programming has changed, and continues to change, radically. The Telecommunications Act of 1996 ("1996 Act") opened the door for local exchange companies ("LECs") to enter the market under several different technological models, and it undertook measures to help advance the development of direct-to-home satellite services. The intent of the 1996 Act was to create a robustly competitive marketplace, with all entities competing on a level playing field. Under such a scenario, it was understood and foreseen that companies would adopt

new and innovative services and marketing schemes, all to the advantage of the consuming public.

Scripps, the franchised cable operator providing cable service throughout the City of Chamblee and DeKalb County, Georgia, is the "incumbent," but unnamed cable operator identified by BellSouth in its comments. Scripps is facing competition in those communities from BellSouth's newly minted cable system that was converted following BellSouth's abandonment of its video dialtone trial.¹ Scripps has been responding to the competitive marketplace by introducing new services and offering innovative marketing opportunities and BellSouth has done likewise. Nonetheless, BellSouth suggests in its comments that cable operators, specifically the unnamed "incumbent" Scripps, should *not* be allowed to respond to competitive pressures. Indeed, BellSouth has insinuated that Scripps' marketing actions may not be legal. This type allegation has become routine for BellSouth, as in last year's competition inquiry BellSouth also accused Scripps of anticompetitive conduct with respect to its then-existing video dialtone trial.² Accordingly, Scripps must once

¹ Once BellSouth analyzed the 1996 Act, it quickly abandoned the open video platform model and pursued cable franchises in both Chamblee and DeKalb County. At this time, only Chamblee has granted BellSouth a franchise while its application is pending in DeKalb.

² Last year BellSouth alleged that the anonymous "incumbent cable operator" in its video dialtone service area – Scripps – "engage[d] in a variety of anticompetitive behaviors" by requesting capacity on BellSouth's video dialtone system. Comments of BellSouth Telecommunications, Inc., CS Docket No. 95-61, filed June 30, 1995, at 3. Although BellSouth's authority to operate the video dialtone system was based, as it must have been, on common carrier provisions in the Communications Act, BellSouth determined that it need not hold out its services to all, and sought to preclude Scripps' use of any channel capacity on the video dialtone system. BellSouth's allegations were rebutted in Scripps' Reply, filed July 28, 1995 (CS Docket No. 95-61), which showed that the allegations of "anticompetitive behavior" were not only lacking in empirical basis, but simply a rehash of BellSouth's arguments exhibiting dissatisfaction with the common carrier obligations underlying video dialtone.

again file a reply to demonstrate that BellSouth's allegations are unfounded and should be ignored.

In its comments, BellSouth asserts that Scripps has engaged in "intense" marketing efforts to counter BellSouth's video entry.³ Indeed, BellSouth implies that Scripps' activities were "predatory" by stating: "Cable operators will respond aggressively to protect their market share. Incumbent cable operators are not strangers to predatory tactics and may be expected to pursue such tactics until the costs of predation outweigh the benefits."⁴ Yet, BellSouth provides no evidence, either documentary or anecdotal, to support its assertions that Scripps' marketing efforts are predatory. The only evidence introduced by BellSouth is copies of some of Scripps' marketing efforts, with no demonstration of how those legitimate marketing efforts were "predatory." Of course, BellSouth could not produce evidence of "predatory" activity because Scripps has only engaged in legitimate, legal competitive marketing activities, as foreseen and encouraged by Congress in the 1996 Act. And only Scripps is absorbing the costs of marketing efforts, and its subscribers are the ones who will benefit.

Indeed, in order to protect fair competition and captured telephone ratepayers, the Commission should be more concerned about the activities of incumbent LECs, like BellSouth, as they use their monopoly supported revenues to finance their entry into video

³ BellSouth Comments at 3.

⁴ *Id.* (footnote omitted).

markets. For example, in Chamblee and DeKalb, BellSouth has started a marketing campaign to advance its cable system that is apparently being paid for by regulated telephone accounts. In a letter sent to customers on June 17, 1996, Vanguard Corporation, the "authorized agent" of BellSouth, offered its cable customers a *free* Caller ID display unit and *free* connection of the unit and Caller ID service, which the letter indicates is worth over \$100.⁵ The letter indicates that this offer was only made to BellSouth cable customers.⁶ The critical issue raised by this "special offer" is who is absorbing the cost of the \$100 worth of equipment and service being given away.⁷ Absent proper accounting and cost allocation, local telephone subscribers will be forced to bear the cost of BellSouth's promotion of its cable service. BellSouth's action thus presents concrete evidence of the type of cross-subsidization that threatens the development of a fair and open market for the provision of video services.

In another example of the threat to fair competition, BellSouth has offered to consumers that will commit to subscribing to its cable service for one, two, or three years, \$.50 per month discounts off their cable bill for each of these other BellSouth services they purchase: BellSouth local telephone service, BellSouth Enhanced Calling features, and

⁵ Letter from Ted Williams, General Manager, Vanguard Corporation, authorized Agent of BellSouth (June 17, 1996) (attached hereto as Exhibit 1).

⁶ *Id.*

⁷ The Commission has recognized that joint marketing of telephony and video services raises important cost allocation issues. See *Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services*, Notice of Proposed Rulemaking, FCC 96-214, ¶ 49 (released May 10, 1996).

BellSouth "Mobility".⁸ In addition, BellSouth offers the same subscribers \$.50 off their monthly cable bill if they commit to purchase/subscribe to BellSouth *long distance* and internet access services.⁹ Under this scheme, BellSouth is attempting to lock-in customers for a service they are not yet authorized to provide.

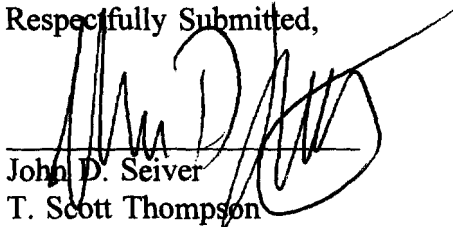
Based on these situations, the Commission should be wary of the unfounded claims by LECs of "predatory" cable practices. Indeed, the Commission knows that BellSouth is hardly a powerless start-up company, and that LECs have had the propensity and ability to abuse their monopoly power to the detriment of cable operators, as they did in the 1960's and 1970's prior to the implementation of the telco-cable cross-ownership ban.¹⁰ The real threat to the development of fair and meaningful competition in the delivery of video programming will be and continues to be the LECs' ability to cross-subsidize their cable entry with monopoly telephone revenue chests.

⁸ BellSouth marketing document: "The BellSouth americast Loyalty Commitment" (attached hereto as Exhibit 2).

⁹ *Id.*

¹⁰ See, e.g., *Better TV*, 31 F.C.C.2d 939, 955 (1971), *modified*, 34 F.C.C. 2d 142 (1972); *United Tel. Co. of Pa.*, 40 F.C.C.2d 359, 361 (1973); *Radio Hanover, Inc. v. United Utils., Inc.*, 273 F. Supp. 709 (M.D. Pa. 1967); *Manatee Cablevision, Inc.*, 22 F.C.C.2d 841, 846, 848 (1970), *vacated*, 35 F.C.C. 2d 639 (1972); *Telecable Corp.*, 19 F.C.C.2d 574, 589 (1969); *Section 214 Certificates*, 21 F.C.C.2d 307, 316, *modified*, 22 F.C.C.2d 746 (1970), *aff'd sub nom.*, *General Tel. Co. v. United States*, 449 F.2d 846 (5th Cir. 1971).

Respectfully Submitted,



John D. Seiver

T. Scott Thompson

COLE, RAYWID & BRAVERMAN, L.L.P.

1919 Pennsylvania Ave. N.W.

Suite 200

Washington, D.C. 20006

(202) 659-9750

**Attorneys for Scripps Howard
Cable TV Company**

August 19, 1996